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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962.

No. 953 111

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, and KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas,
Appellants,

vs.

FRANK C. SCRUPA, d/b/a Credit Advisors,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

JURISDICTIONAL STATEMENT.

WILLIAM M. FERGUSON,
Attorney General for the State of Kansas,
State Office Building,
Topeka, Kansas,

KEITH SANBORN,
County Attorney,
County of Sedgwick, State of Kansas,
Pro-se, County Courthouse,
Wichita, Sedgwick County, Kansas,

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SUPREME COURT OF THE UNITED STATES

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Appellants,

vs.

FRANK C. SCRUPA, d/b/a Credit Advisors,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the United States District Court for the District of Kansas, entered on January 8, 1962, denying the motion of the appellant-defendant Attorney General, to be dismissed from the case, and the judgment permanently enjoining the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature, and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the District Court for the District of Kansas, is not reported below. Copies of the opinion, findings of fact, conclusions of law and judgment are attached hereto as Appendix A.

JURISDICTION.

This suit was brought under 28 U.S.C.A. 1331, 1332, 2281, and 2284, to enjoin the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature, as being in conflict with the 14th Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States; and as being in conflict with the Constitution of the State of Kansas, Article 2, Section 16. The judgment of the District Court was entered on January 8, 1962, and Notice of Appeal was filed in that Court on January 26, 1962. An order extending time for docketing the case to April 23, 1962, was entered by the Court below on March 23, 1962, and further extended by Order of the Court below on April 23, 1962, until May 7, 1962.

The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by Title 28, United States Code Annotated, Section 1253, and 2101 (b).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Rorick* v. *Board of Commissioners of Everglades Drainage District*, 59 S. Ct. 808, 307 U.S. 208, 83 L. Ed. 1242; *Stainback* v. *Mo Hock Ke Lok Po*, 69 S. Ct. 606, 336 U.S. 368; *Florida Lime and Avocado Growers, Inc.*, v. *Jacobsen*, 1960, 80 S. Ct. 568, 362 U.S. 73, 4 L. Ed. 2d 568.

QUESTIONS PRESENTED.

1. The Act (Senate Bill 366; 21-2464, 1961 Supplement to the General Statutes of Kansas) in question is not prohibitory but regulatory, and in any event the action of the Kansas Legislature is not so unreasonable, arbitrary, capricious and unrelated to any valid objection as to fall under the constitutional interdictions relied upon by the plaintiff?

2. The Act in question is not violative of Article I, Section 10, of the Constitution and of Amendment Fourteen, Section I as depriving plaintiff of property without due process of law, denying the equal protection of the laws and as impairing the obligations of existing contracts?

3. Whether the Court erroneously overruled the legislative judgment in regulating the commercial pursuit known as "debt adjusting" when the subject is comprehended in the police power of the State, and debatable questions as to reasonableness are not for the Court to decide but for the Legislature which is entitled to form its own judgment?

4. The United States District Court for the District of Kansas erred in declaring unconstitutional Senate Bill 366 (1961 Supplement, General Statutes of Kansas, 21-2464) which merely codified and clarified the existing power of the Supreme Court of the State of Kansas to control the practice of law. By judicial act the Supreme Court of Kansas, as long ago as 1935, declared the business, so-called of debt-adjusting to be the unauthorized practice of law. (*Depew* v. *Wichita Association of Credit Men,* 142 Kan. 403, 49 P.2d 1041). The District Court of Sedgwick County, Kansas, applied this ruling to the appellee-plaintiff even before the statute was enacted (Case No. B-6975, *Frank*

C. Scrupa v. *Gordon Oliver*, 10 Feb. 1961; excerpt of opinion of Court attached as appendix B). The Statute, merely gives an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law and declared the public policy as expressed by the legislature, to be that a criminal sanction would attach to their unauthorized practice of law.

5. The appellee-plaintiff has no right to engage in the "debt adjusting" business which is prohibited by the statute herein, and the statute could not have deprived appellee of any property rights, or any of his personal rights.

6. The Legislature had the right to determine, aside from any question of the unauthorized practice of law, that it required for the protection of its citizens, that they be given competent legal advice and that competent legal advice not be withheld from them, which appellee could not give but does withhold, and the enactment of the statute was a lawful exercise of the police powers of the State of Kansas, and the Constitutional provisions relied upon by appellee must yield to the legitimate police power of the State of Kansas.

STATUTE INVOLVED.

21-2464, General Statutes of Kansas, 1961 Supplement.

An Act concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.

Be it enacted by the Legislature of the State of Kansas:

Section I. For the purpose of this act, "debt-adjusting" means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay

certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than ($500.00) five hundred dollars, or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided: that the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in the state.

Section 2. This act shall take effect and be in force from and after its publication in the statute book.

STATEMENT.

Appellee, hereinafter referred to as Scrupa, is an individual and a citizen and resident of the State of Nebraska, and appellee is and at all times material hereto has been doing business under the name and style of "Credit Advisors". Credit Advisors has offices in Omaha, Nebraska and Wichita, Sedgwick County, Kansas. Credit Advisors has been engaged in the business of debt adjusting as defined by Senate Bill 366 since September, 1958, and engaged in said business in Wichita, Kansas, since April, 1960.

In general the business may be defined as consisting of making arrangements with persons in financial difficulties, by which, for a fee, appellee undertakes to marshall all his client's creditors and his assets and undertakes to effect an agreement by which the debtor shall pay plaintiff a certain percentage of his earnings which are then paid, as agreed upon, to his creditors. This limited descrip-

tion of the appellee's business is sufficient to pinpoint the questions presented herein.

This action was filed on June 27, 1961, in the United States District Court for the District of Kansas under Title 28, U.S.C.A., Sections 1331, 1332, 2281, and 2284 to enjoin the enforcement, operation and execution of Senate Bill 366, 1961 Legislative Session. The District Court on June 28, 1961, granted a temporary restraining order against appellants until a three-judge Federal Court could be convened. The three-judge District Court after hearing on August 17, 1961, found, one judge dissenting, the act in question to be prohibitory not regulatory; but even if construed to be regulatory, unreasonable and an unwarranted regulation of a lawful business, and therefore, a violation of the rights of appellees as guaranteed by the Federal Constitution. It was ordered, adjudged and decreed by the Court that defendants or their agents, servants or employees are hereby enjoined permanently from filing any complaint against the plaintiff, his agents, servants, or employees for alleged violation of Senate Bill 366, Chapter 190, 1961 Kansas Session Laws or prosecuting any acts for violation of same by said plaintiff, his agents, servants, or employees or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff, his agents or employees.

THE QUESTIONS ARE SUBSTANTIAL.

The statute is challenged as violative of Article I, Section 10, of the Constitution and of Amendment Fourteen, Section I, as depriving appellee-plaintiff of property without due process of law, denying the equal protection of the laws and as impairing the obligations of existing contracts.

Treatment and comment in other jurisdictions on the problem of debt adjusting should be considered in weighing the reasonableness and appropriateness of the action taken by the Kansas Legislature.

That these issues are generally important and particularly important to the citizens of Kansas is demonstrated by the various and numerous cautionary articles and comments. See for example: *Good Housekeeping Magazine,* February, 1959, "Warning, The Debt Adjustors are Back!" Murray Leigh Bloom, *"Debt Adjustment—Meanest Racket Out"* The Legal Aid Briefcase, Vol. 13, No. 5, June, 1955, p. 99. The Bloom Article was condensed in the October 1955, *Readers Digest,* at page 131, under the heading *"Beware of Debt-Adjustment Racketeers".*

The subject has received much attention in the Unauthorized Practice News, publication of the American Bar Association Committee on Unauthorized Practice of Law.

It certainly is not insignificant in appraising the action of the Kansas Legislature to mention the number of States which in a short span of years have prohibited and in some cases regulated the debt adjustment business. See the summary of State Statutes appearing in the opinion in *American Budget Corporation* v. *Furman,* 67 N.J. Super. at 138. They furnish additional meaning and support to the substantiality of the questions herein involved.

The issues involved in this appeal are similar if not identical to those raised in various State Courts. Chronologically, the first of these cases is *Home Budget Service* v. *Boston Bar Association,* 335 Massachusetts 228, 139 N.E.2d 387, decided in 1957. The statute there involved defined the furnishing of advice or services in connection with a debt pooling plan as the practice of law and made its practice by laymen a misdemeanor. The Court upheld the act. A New Jersey statute involving debt adjusting

was upheld in *American Budget Corporation* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63; affirmed on opinion below, 36 N.J. 129, 175 A.2d 622. The opinion collects the statutes on debt adjusting, and discusses and concludes contra the Court below in the instant case.

The third case is *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A.2d 453, in which a debt adjustment statute was held unconstitutional.

The majority of the three-judge Court below relied heavily upon *Commonwealth* v. *Stone*, *supra*. The Court below concluded the statute to be identical and since the Pennsylvania Court decided the act was an unlawful abuse of police power decided likewise in this case. This in spite of the anomalous situation in the *Commonwealth Case*. Although, there were then in existence similar statutes in Florida, Georgia, Maine, New York, Ohio, and Wyoming, none was called to the attention of the Court which proceeded on the fallacious assumption that the Pennsylvania statute was unique (155 A.2d 456). Also, the *Boston Bar Case*, decided almost three years earlier, was not called to the court's attention.

The Pennsylvania opinion relied heavily upon *Adams* v. *Turner*, 244 U.S. 590, decided in 1917. As pointed out in *American Budget Corporation* v. *Furman*, *supra*, there has been a marked change in judicial thought since 1917. The *Adams-Turner* case is expressly disapproved in *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.*, 335 U.S. 525, 535-537.

The majority of the District Court below found that the practice of debt-adjusting is subject to great abuse (page A4, opinion attached hereto as Appendix A). However, the Court, while frankly admitting the State can by proper regulation, set up standards and qualifications, and even limit the business to certain classes of qualified persons,

substitutes its judgment for that of the legislature of Kansas in dealing with the situation.

The judicial treatment of governmental action in this area runs to a uniform pattern; it is demanded only that the exercise of police power in a statute not be unreasonable, and the means selected have a real and substantial relation to the object sought to be obtained. This standard is recognized in *Nebbia* v. *People of State of New York*, 291 U.S. 502, 54 S. Ct. 505 (1934). As was said in *American Budget Corp.* v. *Furman*, quoting from *Staten Island Loaders, Inc.*, v. *Waterfront Commission*, 117 F. Supp. 308 (D.C. S.D. N.Y. 1953) "* * * the United States Supreme Court has withdrawn from this extreme view of the Fourteenth Amendment * * * and has made it increasingly clear that it is not for the judiciary to decide whether the Legislature has chosen the best remedy to meet an evil * * *" See in this connection *Clark* v. *Paul Gray*, 306 U.S. 583, 59 S. Ct. 744, 83 L. Ed. 1001; *Ward and Gaw* v. *Krinsky*, 259 U.S. 503, 42 S. Ct. 529, 66 L. Ed. 1033. The judgment of the District Court is in direct conflict with the attitude of the Courts in this area of governmental regulation.

Article I, Section 10 of the Constitution is no restriction upon the legitimate police power of the States. All persons contracting do so with the knowledge that "the police power of the Government to protect * * * the general welfare of the people, is paramount to any rights under contracts between individuals". *East New York Savings Bank* v. *Hahn*, 326 U.S. 230, 232, quoting from *Manigault* v. *Springs*, 199 U.S. 473, 480. The police power is not limited to only health and safety of society, but extends to its financial security.

The equal protection and due process clause of the Fourteenth Amendment are similarly circumscribed. *Morey* v. *Doud*, 354 U.S. 457, 463, quoting from *Lindsley* v. *National Carbonic Gas Co.*, 220 U.S. 61, 76.

If plaintiff's business constitutes the practice of law, the statute is valid, because the right to practice law is not a privilege or immunity of a citizen of the United States within the purview of any constitutional provision. *Bradwell* v. *Illinois*, 83 U.S. (16 Wall.) 130; *In re Lockwood*, 154 U.S. 116; *Green* v. *Elbert*, 8 Cir., 63 Fed. 308; *Mitchell* v. *Grennough*, 9 Cir., 100 F.2d 184.

Without regard to whether plaintiff's business constitutes the practice of law, if any state of facts can reasonably be conceived from which the Legislature could conclude that the welfare of its citizens required at least availability of legal advice as an incident to such a business, the statute is equally valid.

APPELLEE-PLAINTIFF'S ADMISSIONS.

Plaintiff-appellee obtains his clientele by advertising his ability to secure relief for embarrassed debtors. When a prospective client appears, plaintiff explains the virtues and advantages of his plan of prorating payments among creditors at a lesser rate and over a longer period of time than called for by the various contracts. He does not mention the relief obtainable under Wage Earner Plan or other chapters of the Bankruptcy Act. He does not mention the consequences of failure of his proposed scheme. He does not discuss the exemption laws of Kansas. He does not discuss nor consider validity of the indebtedness. (Transcript of Hearing before Judge Hill, on The Temporary Restraining Order, of June 28, 1961, examination of Mr. Scrupa.)

In *Depew* v. *Wichita Association of Credit Men*, 142 Kan. 403, 49 P.2d 1041, the facts as found by the Court were:

"One department of the work of the association that has been of considerable importance has been the making of agreements or assignments for the benefit of creditors, and the use of what is known as a trust mortgage, whereby M. E. Garrison as trustee liquidates businesses, makes settlements with creditors, instead of the usual bankruptcy procedure in the Federal Court or receivership in state courts. Under such agreements as plaintiff's exhibit No. 40 the business is not brought into court for liquidation but is handled outside by Garrison as trustee.

"An owner of a business in financial difficulties is seen by a representative of the association or he calls upon the association or is sent in by a creditor or someone else interested. It is the custom of M. E. Garrison to advise with him, explain to him the difference between such an arrangement and bankruptcy proceedings and inform the business man what he considers to be the advantages of the liquidation without bankruptcy. While Mr. Garrison does not prevent him from seeing his attorney he attempts by statements or representations to show him the advantages of the plan being outlined and if the prospect is agreeable has him sign a contract. Plaintiff's exhibit '12' among other things provides for the taking of an audit of the business at $25.00 per day paying a commission for supervising and adjusting the claims of the creditors. The contracts used in these cases were prepared some years ago by a now distinguished Wichita attorney. Such papers, agreements and so forth as are needed for the complete handling of the business in this liquidation are furnished by the association, prepared blanks being used. The contracts prepared and signed and the resulting work on the part of the representatives of the association results in complete liquidation of the individual business, for which the association receives compensation. The liquidating merchant receives all the necessary advice through Mr. Garrison and officers of the association."

The trial court's conclusion of law was:

> "The liquidation of a business by this method, the contracts and forms used and the advice given with services which require legal skill and knowledge constitutes practice of law." (142 Kan. 410, 49 P.2d 1045).

This conclusion of law was expressly approved by the Supreme Court and the judgment of injunction affirmed (142 Kan. 416, 49 P.2d 1049).

In the same case the Court held against appellant's contention that injunction against its activities was a violation of Section 10 of Article I of the Constitution of the United States and of amendments fifth and fourteenth thereto, the same provisions relied upon by plaintiff in the case at bar. The Supreme Court denied certiorari, 297 U.S. 710.

The defendant in the cited case performed services in the liquidation of the indebtedness of financially embarrassed debtors. The plaintiff in the case at bar does precisely the same thing. Certainly the legislature was entitled to conclude that such conduct constituted the practice of law.

We think it clear that the legislature might reasonably conclude that an embarrassed debtor employing an agency to work out agreements with creditors for liquidation of his debts needs legal advice as to validity and priority of his indebtedness, the exemption laws of the State of Kansas, and an explanation of remedies available to him and of the cost and consequences of resorting to such remedies available to him.

If the plaintiff furnishes such advice he is certainly engaged in the practice of law.

If plaintiff does not furnish such advice, the debtor acts blindly, unaware that other remedies may be far more ad-

vantageous as well as far less expensive than the scheme extolled by plaintiff.

The State of Kansas in the exercise of its police power has determined that it is an imposition upon its citizens for persons incompetent to advise an embarrassed debtor as to the remedies available to him; to solicit employment and to undertake to advise and conduct a debt liquidation program for such debtors.

If the State may prohibit the practice of medicine, dentistry, barbers, cosmetology by unlicensed and unqualified persons, it may prohibit the business of debt liquidation by unlicensed and unqualified persons.

It is contended that the statute does not regulate, but prohibits. It prohibits the activity only by unlicensed persons. That is the essence of regulation. Plaintiff or any other person may procure a license to practice this activity by becoming licensed to practice law. Plaintiff wishes to conduct this activity without the need for securing the qualifications of one licensed to practice law, and even more importantly, without subjecting himself to the prohibitions and restraints and responsibilities contained in the Canons of Ethics.

Plaintiff testified that debt adjustment was a business conducted in metropolitan areas of many states. That fact has no bearing upon the legislature's right to determine that conduct of such business by persons not qualified as lawyers is contrary to the best interests of its citizens. Nine other legislatures reached the same conclusion.

It is submitted that the decision of the District Court fails to recognize the Act of the Kansas Legislature as a proper exercise of the police power with a reasonable relationship to its objective, and that by its decision it authorizes the appellee-plaintiff to engage in prohibited ac-

tivity as declared by the Kansas Legislature in Senate Bill 366; which Act is designed to strike at a recognized evil; that its constitutionality should be upheld for the reasons set forth above.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

WILLIAM M. FERGUSON,
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KEITH SANBORN, PRO-SE,
Deputy County Attorney,
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Wichita, Kansas,
MELVIN M. GRADERT,
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Sedgwick County,
Wichita, Kansas,
Of Counsel.

APPENDIX "A".

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS,

Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas,

Defendants.

Civil Action No. W-2434.

Findings of Fact, Conclusions of Law and Opinion.

(Filed November 27, 1961.)

This is an action to enjoin the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature. The grounds on which the action is predicated are that the act is void because it violates and infringes plaintiff's rights guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.

The action being one to enjoin the enforcement of a state statute, a Three-Judge Court was convened. The cause came on regularly for hearing at Topeka, Kansas, on the 17th day of August, 1961, plaintiff being present by his attorneys, Lawrence Weigand, Don Bell and Ernest McRae, and the defendants being present by their attorneys, Charles Hanson, Assistant Attorney General; Keith

Sanborn, County Attorney, Sedgwick County; William Tomlinson, Assistant County Attorney, Sedgwick County; Arty Vaughn, Assistant County Attorney, Sedgwick County; and Wayne Coulson. At the conclusion of the hearing, the case was taken under advisement. Briefs were requested. These have been considered by the court. The court finds these facts.

FINDINGS OF FACT.

Plaintiff operates a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Kansas. The business consists of debt adjustment. In general, the business may be defined as consisting of making arrangements with persons in financial difficulties, by which, for a fee, plaintiff undertakes to marshall all his client's creditors and his assets and undertakes to effect an agreement by which the debtor shall pay plaintiff a certain percent of his earnings which are then paid, as agreed upon, to his creditors. This sketchy description of plaintiff's business is sufficient to pinpoint the questions presented in this case.

The 1961 Act referred to above deals with debt adjustment. Plaintiff's business falls within the provisions of the act. The act reads, as follows:

> "SECTION 1. For the purpose of this act, 'debt adjusting' means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by

imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided, That the provisions of this act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state."

/s/ Walter A. Huxman,
United States Circuit Judge,
Retired.

(Signed) Delmas C. Hill,
United States Circuit Judge.

(Signed) Arthur J. Stanley, Jr.
Chief Judge, United States
District Court.

CONCLUSIONS OF LAW.

The court concludes, as a matter of law, that the act in question is prohibitory and not regulatory; but even if construed as regulatory, it is an unreasonable and unwarranted regulation of a lawful business, and, therefore, constitutes a violation of the rights of plaintiff as guaranteed by the due process clause of the Fourteenth Amendment to the Federal Constitution.

/s/ Walter A. Huxman,
United States Circuit Judge,
Retired.

(Signed) Delmas C. Hill,
United States Circuit Judge.

Chief Judge, United States
District Court.

OPINION.

Debt adjustment is a business affected by a public interest and because of its nature is subject to regulation by a state under its police powers. State police powers are broad and comprehensive and it is held, without exception, that federal courts should be loath to interfere with the exercise of such powers. But, on the other hand, we have a clear duty and mandate to protect federal rights guaranteed by the Constitution, and this duty we must not shirk.

The Attorney General has filed a motion to dismiss as to him on the ground that he is not a proper party. There are a number of state cases of a similar nature in which the Attorney General was joined as a party defendant.[1] Apparently the propriety of joining him was not specifically challenged. It seems to have been generally accepted that he is a proper party defendant. The Attorney General of Kansas is the general law enforcement officer of the state. He supervises the activities of county attorneys. In proper cases, he may direct them to enforce the laws of the state. The motion to dismiss should be overruled.

The decision turns upon whether the act in question is regulatory or prohibitory, and if regulatory, whether it manifests a reasonable and necessary regulation of a business which, although subject to police power, is nonetheless a lawful business. A right to regulate does not carry with it the right to adopt unreasonable or unfair regulations.[2] Since there is no dispute in the principles of law which must be applied, and since we are here concerned

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1. *Gilbert* v. *W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen.*, 352 P.2d 58.

2. *Gilbert* v. *W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., supra.*

with the construction of the Kansas statute by application of these principles, no useful purpose would be served by citation and discussion of a number of decisions construing somewhat similar statutes of other states, especially where such statutes differ in material respects from the one under consideration here.

Kansas, in passing the act in question, apparently took it almost verbatim from a similar Pennsylvania statute. The wording of the two acts is almost identical. The Superior Court of Pennsylvania in a well reasoned opinion declared the Pennsylvania act unconstitutional. It held that the Pennsylvania act was not regulatory but prohibitory. It held that prohibiting engagement in a lawful business was an abuse of the police power.[3] We are in full accord with the reasoning and philosophy of the Pennsylvania court.

Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons. No doubt, the state can, by proper regulations, set up standards and qualifications, and even limit the business to certain classes of qualified persons. But such regulations must be founded on reason. Whatever the state does must bear a reasonable relation to what the state seeks to do—protect those in financial distress from exploitation by unscrupulous and dishonest operators.

A careful analysis of the act fails to show anything that can be denominated regulatory. After defining debt adjustment, the act states that anyone who "engages in the business of debt adjustment shall be guilty * * *" of an offense and punished as defined in the act.

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3. See *Commonwealth* v. *Stone*, 155 A.2d 453.

The only exception is that the "act shall not apply to those situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state." This, in our opinion, is not a regulation, or if it is, it is an unreasonable regulation. To say that a lawyer may adjust debts only as an incident to a case which is otherwise before him, is most unreasonable. If a lawyer, engaged in the regular practice of the law, concluded there was a greater field for him in devoting all his time to debt adjustment, rather than to the general practice of law, he could not discontinue his general practice and devote his full time to debt adjustment. He could not do so because he can adjust debts only as an incident to his general law practice. We conclude, first, that the act is prohibitory and not regulatory; and that it prohibits anyone from engaging in the business of debt adjustment. But even if the exception is considered as regulatory, it is an unreasonable regulation of a lawful business. We know of no statute aside from the Pennsylvania statute which has gone that far.

Our attention is called to the case of *American Budget Corp.* v. *Furman*, 170 A.2d 63, in which the New Jersey Superior Court reached a conclusion contrary to that of the Pennsylvania Court and held a somewhat similar act constitutional. No useful purpose would be served by a detailed analysis of the Furman case. It is sufficient to say that it differed in many particulars from the Pennsylvania case and from the act we have before us here. We adopt the reasoning of the Pennsylvania case, *Commonwealth* v. *Stone*, *supra*.

Our attention has also been called to the case of *Williamson* v. *Lec Optical Company*, 348 U.S. 483, in which the Supreme Court held constitutional a rather drastic act by the Oklahoma legislature regulating the business of fitting

and selling glasses as a valid exercise of the police power. But that act did not outlaw the business of fitting lenses to a face or duplicating or replacing into frames, lenses or other optical appliances. The attack on the statute was that it was unlawfully discriminatory in its provisions as to who could engage in such business or the conditions under which the business could be carried on. Under the Kansas statute, no one can engage in debt adjustment as a business. Debt adjustment, though recognized as a lawful business, is declared unlawful.

Judgment will be entered denying the motion of the defendant, Attorney General, to be dismissed from the case. A further judgment will be entered permanently enjoining the enforcement of the act against plaintiff.

/s/ Walter A. Huxman
United States Circuit Judge, Retired

(Signed) Delmas C. Hill
United States Circuit Judge

Chief Judge, United States District Court.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS,

Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas,

Defendants.

No. W-2434

Dissenting Opinion.

(Filed November 27, 1961.)

ARTHUR J. STANLEY, JR., District Judge.

I cannot agree with the conclusion that the questioned statute is unconstitutional.

That debt adjustment is a business affecting the public interest is not questioned. It has been the subject of legislation in many states. (See the summary of state statutes appearing in the opinion in *American Budget Corp.* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63.) Regulation of the business, therefore, is a proper function of the state in the exercise of its police power. I believe that the Act under attack is an effort on the part of the legislature of Kansas to impose reasonable and necessary regulations on a business affecting the financial stability of the citizens of Kansas.

The Act provides in effect that debt adjustment as therein defined may be engaged in only by attorneys, and then only when carried on "incidentally in the lawful practice of law." It is true that a lawyer who has

abandoned his general practice to devote his full-time to debt adjustment would be in violation of the statute. I feel sure that this is exactly what the legislature intended. An attorney engaged in general practice, when consulted by a client whose financial affairs had become involved, would, quite naturally, explore all avenues open to his client. He would inquire as to the possibility of defenses to the claims, consider the applicability of exemption laws, explain the advantages and disadvantages of bankruptcy, and might or might not suggest the initiation of a debt adjustment scheme. One admitted to the Bar but who had chosen to become a debt adjuster and to limit himself to that one narrow field would be likely to adopt a different approach to the problem. He would not be expected to advise his client to seek relief through another means than that in which he specialized exclusively. (If he did, would he not by so doing bring himself within the proviso so that he would not then be barred by the statute?)

In arriving at a decision as to the necessity or reasonableness of the regulation, it is not essential that the court agree with the methods adopted by the lawmakers, or that it be concerned with the wisdom of the legislation. The scope of the court's inquiry should be limited to whether any state of facts, known or reasonably to be assumed, support the legislative judgment. *American Budget Corp.* v. *Furman, supra; Williamson* v. *Lee Optical Co.*, 348 U.S. 483.

I am more impressed by the reasoning of the Superior Court of New Jersey in *American Budget Corp.* v. *Furman, supra*, than by that of the Superior Court of Pennsylvania in *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A.2d 453. The Pennsylvania court leans heavily on *Adams* v. *Tanner*, 244 U.S. 590. As the New Jersey court points

out, quoting *Staten Island Loaders, Inc.*, v. *Waterfront Commission*, 117 F. Supp. 308 (D.C. S.D. N.Y. 1953), "* * * the U. S. Supreme Court has withdrawn from this extreme view of the Fourteenth Amendment '* * * and has made it increasingly clear that it is not for the judiciary to decide whether the legislature has chosen the best remedy to meet an evil *.* *.'"

I would hold that the Kansas Act is not invalid as in violation of the Fourteenth Amendment and could deny the injunction.

(Signed) Arthur J. Stanley, Jr.,
District Judge.

APPENDIX "B".

No. B-6975 10 Feb. 1961.

Frank C. Skrupa v. Gordon Oliver

The Court: In this case, as I understand it, the defendant was employed by the plaintiff and received training to the extent of a couple of months in Omaha, then was brought to Wichita, wherein a branch office or another office, was opened by the plaintiff; that for some 8 months or so he worked there as manager of the office in Wichita, and then his employment was terminated. That after he had worked a couple of weeks in Omaha, he entered into a contract marked Plaintiff's Exhibit 1 in this case. He was trained from that of a person having worked in safety up in the position to manage the type of business that the plaintiff maintains in Wichita.

There is no evidence before this Court that the plaintiff has been damaged in any way by the defendant going to work for someone who is in a similar type of business. As a matter of fact, the evidence shows, in my opinion, that the plaintiff has not received any damages. There is no testimony here to show, and as a matter of fact to the contrary, that any of the plaintiff's clients as they refer to them, were taken by the defendant to his new employer. As a matter of fact, as I interpret the testimony he would have no reason, or could not attempt to take them because the agreement was already made between the so-called clients and the plaintiff.

I see no trade secrets involved here. I was trying to elicit it from the witnesses this morning wherein he obtained information that would be, by the use of it, would be detrimental to that of the plaintiff.

This is not the type of case of personal contact such as your route man that we have had cases here in Wichita where I have restrained route men from going back into the same area, and not restrained them from working for competitive company in a different area, as long as they did not interfere in the routes where they had been employed.

Injunction is an extraordinary remedy; it is to be brought only on rare occasions wherein the damages are irrepairable. In addition to that, I am of the opinion that the plaintiff's business as conducted here in Wichita smacks of authorized practice of law, and for these reasons the demurrer to the evidence will be sustained.

* * *

The court is of the opinion, Mr. McRae that when a person comes into this court asking for equitable relief in the form of an injunction that they must come into this court with clean hands. Therefore, I am of the opinion that this plaintiff's conduct of business in the city of Wichita is bordering on the unlawful practice of law and he is not entitled to come into this community and practice law. That is merely an additional reason, other than the two that I have mentioned. This court is vitally interested, not only as a judge, but as President of this bar association that we not have unauthorized practice of law in the city of Wichita or any place else in the state, and I think that is part of the responsibility of the courts and judges thereof.

* * *

Eliminating that phase of it and going strictly to the pleadings and the testimony other than that with reference to possibly the unauthorized practice of law as I stated in my first two reasons, there were no trade secrets in-

volved here that have been presented to this court. There was no loss by the plaintiff according to the testimony here, that the defendant was not such that either his personal contacts with the plaintiff's clients as he referred to them, in a position to take them away from the plaintiff. I see from the evidence before there has been no damage done to the plaintiff.

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I don't see any testimony before this court wherein I can see that the plaintiff would ever be injured, from the testimony before this court.